IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Misc. No. 427-M of 2006 (O&M)

DATE OF DECISION : 17.01.2007

Kulwinder Kaur

.... PETITIONER

Versus

State of Punjab and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. Harbhagwan Singh, Senior Advocate, with
Mr. Vikrant Duggal, Advocate,
for the petitioner.

Mr. N.S. Gill, AAG, Punjab.

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Complainant Kulwinder Kaur wife of deceased Gurcharan Singh has filed this petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as `the Code') for further investigation by the Central Bureau of Investigation in FIR No. 271 dated 21.6.2003 under Sections 302, 34 and 120-B IPC, registered at Police Station Mohali, in respect of murder of her husband.

2. The brief facts relevant for the disposal of this petition are that deceased Gurcharan Singh was the founder Chairman of Kandi Educational Trust, which runs an institute known as the Institute of Engineering and Technology, Bhaddal. There were 8 trustees of the said institution, including Bakhshish Singh Randhawa (respondent No.4 herein), who is one of the accused in the aforesaid case. It is the case of the petitioner that respondent Bakhshish Singh Randhawa and his wife Hardev Kaur used to give threats to deceased Gurcharan Singh because Bakhshish Singh Randhawa wanted to be Chairman of the Trust. It is alleged that in the year 2002, the election of the office of Chairman of the said Trust was held

which was contested by deceased Gurcharan Singh and respondent Bakhshish Singh Randhawa. Bakhshish Singh Randhawa lost the election, due to which he was having a grudge against deceased Gurcharan Singh. It is further alleged that on 21.6.2003, when the deceased went for morning walk, he was attacked by accused Rachhpal Singh and Satbir Singh with daggers. The occurrence was witnessed by the petitioner. When the deceased was taken to Fortis Hospital, Mohali, he was declared dead. It is alleged that the said murder was committed in a conspiracy and at the instance of Bakshish Singh Randhawa, as he wanted to be the Chairman of the Trust. On the statement of the petitioner, the aforesaid FIR was registered.

3. After investigation, the challan was filed against Rachhpal Singh, Satbir Singh and Bakhshish Singh Randhawa. Thereafter, the case was committed to the Court of Sessions, where it is still pending. Charge against the accused has already been framed under Section 302 read with Section 34 IPC. During the course of arguments, learned State Counsel informed that in the said case, all the prosecution witnesses have been examined and even the statements of all the accused under Section 313 of the Code have also been recorded on 23.12.2006.

4. When the aforesaid case was at the stage of prosecution evidence, the instant petition was filed by the petitioner alleging therein that investigation of the case was not properly conducted by the investigating agency, as statements of the witnesses before whom confessional statements were made by the accused were not recorded, but later statements of wrong persons, who were the friends of the accused were recorded alleging that the confessional statements were made before them. Those witnesses have now resiled from their stand. All these facts clearly show that the fair and proper investigation was not conducted by the investigating agency, therefore, in the interest of justice, further investigation is required to be ordered under Section 173 (8) of the Code. In this regard, it has been mentioned that accused Satbir Singh and Rachhpal Singh made extra judicial confession

before one Baldev Singh son of Jagjit Singh resident of Village Hafizpur, District Yamuna Nagar and the said Baldev Singh made a statement before the Investigating Officer on 3.7.2003, but his statement was not recorded by the then Investigating Officer DSP Daljit Singh Rana, who partly investigated the case. It is alleged that in stead of recording the statement of genuine witness Baldev Singh, the statement of a bogus and false witness supplied by accused Bakhshish Singh Randhawa was recorded showing that the extra judicial confession was made before him, who subsequently did not support the prosecution version. It is further alleged that on 10.6.2003, one Hardeep Singh son of Netar Singh overheard the accused in a liquor shop at Mohali, while they were conspiring to kill the deceased, and said Hardeep Singh made a statement before the Investigating Officer on 26.6.2003, but his statement was also not recorded. Instead of that, statement of one Charanjit Singh to that effect was recorded, who later on also did not support the prosecution case. In view of these facts, it has been alleged that proper investigation was not conducted and the investigating agency had acted from the very inception to help the accused.

5. In the petition, it has also been alleged that during the trial, accused Rachhpal Singh filed two applications before the trial court for making confessional statement. Notice of the said application was given to the prosecution, but the prosecution for the reasons best known to it delayed to file reply for several months with object to provide time to accused to change his mind. Subsequently, the statement was recorded on 10.8.2005, in which he stated that those applications were moved by him under pressure.

6. During the pendency of this petition, an application (Crl. Misc. No. 66199 of 2006) was filed alleging therein that during the pendency of the instant petition, a conversation between accused Rachhpal Singh and one Surinder Singh son of Sardara Singh, resident of Mohali was tape recorded, in which he disclosed conspiracy between him and accused Bakhshish Singh Randhawa. It is case of the petitioner that investigation of the case with regard to the conspiracy hatched by the accused has not been

properly conducted, therefore, in the interest of justice, further investigation in the case is necessary.

7. While referring to the aforesaid facts, learned counsel for the petitioner submitted that in the facts and circumstances of the case, where the investigation was not properly conducted by the investigating agency, further investigation is necessary in the interest of justice. Since the trial court has already taken cognizance of the matter, therefore, only this court, in exercise of the powers under Section 482 of the Code, can order for further investigation under Section 173 (8) of the Code. In support of his submission, learned counsel relied upon a judgment of the Supreme Court in ***Kashmeri Devi*** v. ***Delhi Administration,*** 1988 (2) RCR (Criminal) 44 and a judgment of Delhi High Court in ***Kulbhushan Sharma*** v. ***State*** 2005 (4) RCR (Criminal) 408.

8. On the other hand, learned counsel for the respondent-State submitted that a fair investigation was conducted by the investigating agency and thereafter, challan was filed against three accused. The case was then committed to the Court of Sessions, charge was framed and the trial commenced. Learned counsel submitted that at a belated stage, the instant petition was filed. Prior to that, during the investigation and after submission of the challan, no such grouse was made nor at any point of time, it was agitated that the confessional statement was made before Baldev Singh. He further submitted that at a belated stage, this petition was filed on the allegation that confessional statement was made before Baldev Singh. Learned State Counsel contended that now the trial is at the fag end, as statements of all the prosecution witnesses have been recorded and even statements of the accused under Section 313 of the Code have been recorded. In view of these facts and circumstances, the inherent powers of this Court under Section 482 of the Code, which are to be exercised in exceptional circumstances, should not be exercised to order further investigation, as issuance of such directions will not be in the interest of justice and a fair trial.

9. After hearing the arguments of learned counsel for the parties and in view of the facts and circumstances of this case, I am of the opinion that no case is made out by the petitioner to order further investigation of the case under Section 173 (8) of the Code, in exercise of the inherent power of this court under Section 482 of the Code. This Court has been given wide inherent powers under Section 482 of the Code, but these extra ordinary powers are to be exercised sparingly in exceptional cases. This Court may or may not exercise this power, in a given situation, particularly having regard to lapse of time. Recently, it has been held by the Supreme Court in ***Popular Muthiah*** v. ***State represented by Inspector of Police,*** (2006) 7 Supreme Court Cases 296, that the inherent power of the High Court is required to be exercised sparingly. It was further held that investigation of an offence is a statutory power of the police. The State in its discretion may get the investigation done by any investigating agency unless there exists an extra ordinary situation. In exercise of power under Section 482 of the Code, the High Court cannot issue direction to investigate a case from a particular angle or by a particular agency and cannot direct that a particular witness be examined, who had not been cited as a prosecution witness. It was further held that it will be beyond the jurisdiction of the High Court in directing the prosecution to investigate the case from a particular angle.

10. In the instant case, a thorough investigation was conducted. Statement of the witness, before whom the confessional statement was made by the accused, was duly recorded, challan was filed, case was committed, charge was framed and the trial had commenced, but no grouse with regard to the unfair investigation was made at that stage. However, when some of the prosecution witnesses alleged to have not fully supported the prosecution case, the instant petition was filed with the allegations that statement of the witness, before whom the actual confessional statement was made, was not recorded, and in spite of that, statement of different person was recorded, but he did not support the prosecution version. Such kind of

plea cannot be allowed after the examination of the prosecution witnesses at a belated stage. It will cause serious prejudice to the fair trial. The power of further investigation under Section 173 (8) of the Code has been given with an object to advance the cause of justice. This power has to be exercised by the court sparingly and cautiously. It cannot be exercised in a routine and casual manner. It will result in unjustified interference in the investigation, which is in the domain of the police, or may cause serious prejudice to a fair trial. The judgment cited by the learned counsel for the petitioner are not applicable in the facts and circumstances of the case.

11. Thus, in the facts and circumstances of the present case, at this belated stage, in my opinion, no further investigation in the case is required on the grounds mentioned in the petition.

12. Dismissed.

January 17, 2007 **(SATISH KUMAR MITTAL)**
ndj **JUDGE**